



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 15, 2004

Mr. Brad Norton
Assistant City Attorney
City of Austin
P.O. Box 1088
Austin, Texas 78767-8845

OR2004-4862

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203518.

The City of Austin (the "city") received a request for a copy of the Business Plan submitted in a competitive bidding process relating to a redevelopment project. You claim that the requested information is excepted from disclosure under sections 552.104 and 552.110 of the Government Code. You also assert that the release of the submitted information may implicate the proprietary interests of a third party. You state, and provide documentation showing, that you have notified Catellus Corporation ("Catellus") of the right to submit arguments to this office as to why the submitted information should not be released pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in the Act in certain circumstances). We have considered the exceptions claimed and reviewed the submitted information.

You assert that the Business Plan was the subject of a previous ruling issued by this office as Open Records Letter No. 2002-2829 (2002). In that ruling, this office concluded that the Business Plan is excepted from disclosure under section 552.104 of the Government Code. You further assert that the relevant facts and circumstances have not changed since the issuance of Open Records Letter No. 2002-2829. Thus, with respect to the Business Plan at

issue, we determine that the city may continue to rely on Open Records Letter No. 2002-2829. *See* Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Public Information Act; and 4) the law, facts, and circumstances on which the prior ruling was based have not changed since the issuance of the ruling). Based on this finding, we do not address the remaining arguments against disclosure submitted by the city and Catellus.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

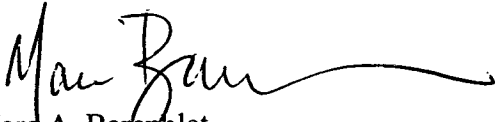
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 203518
Enc. Submitted documents

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